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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,693	03/04/2002	James H. Obermeyer	34044-3	8492

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Charles J. Meyer, Esq.
Woodard, Emhardt, Naughton, Moriarty and McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137

EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,693

Applicant(s)

OBERMEYER, JAMES H.

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 17, 18, 24-31 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) 11, 30, 31 and 33-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 17, 18 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

DETAILED ACTION

1. With regard to the election of species requirement, applicant's election without traverse in paper no. 7 of the embodiment of figure 4 is noted. After detailed review of the applications claims, it has been determined that claims 11 and 30 read on the non-elected embodiment of figure 6 only. Claims 11 and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. Election was made **without** traverse in Paper No. 7.

2. With regard to applicant's election of the group I embodiment, applicant indicates in paper no. 7 that the election is "without traverse". However, applicant has amended the method claims of non-elected group II and indicates that such claims are now properly grouped with group I. In view of applicant's amendments and comments, it appears the election of group I is actually "with traverse" and in order to expedite prosecution will be treated as such. Group I defines claims 1-11, 17-18, and 24-30. Group II defines claims 31 and 33-35. After reviewing applicant's amendments to the base claim of group II, the examiner maintains that the previously grouped claims are still properly restrictable and such restriction is maintained. For example, in this case, the process as claimed in group II (evidence claim 31) can be practiced by another and materially different apparatus such as one not requiring at least a hinge arm axle (claims 1+) or at least a hinge arm designed to move the bed *upward and backward* (claims 17+). Applicant's traversal is not found persuasive and claims 31 and 33-35 are withdrawn with traverse as being drawn to a non-elected group. As discussed above, the inventions are distinct and have acquired a separate status in the art because of

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their recognized divergent subject matter. Moreover, the claim groupings have differing classifications as detailed in the last office action which is further evidence of separate status in the art.

The requirement is still deemed proper and is therefore made FINAL.

3. The drawings are objected to because leftmost label 65 on figure 2 should be – 60--. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: gear 275 (page 8). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The disclosure is objected to because of the following informalities: "65" on page 7 – line 21 should be –60--.

Appropriate correction is required.

6. Claims 1-10, 25-26, and 29 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, "the first end portion" in lines 5-6 lacks clear antecedent basis and could be written as –a first one of said end portions—for clarity as best

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understood. Additionally, "the second end portion" in line 6 lacks clear antecedent basis and could be written as —a second one of said end portions— for clarity as best understood.

Re claim 2, "the vertical distance" lacks clear antecedent basis and could be written as —a vertical distance—as best understood.

While not elected or acted on, in an effort to expedite prosecution, it is noted regarding claim 11 that "the end" lacks clear antecedent basis and could be written as —an end—as best understood.

Re claim 25, "the vertical distance" lacks clear antecedent basis and could be written as —a vertical distance—as best understood.

Re claim 26, "the vertical distance" lacks clear antecedent basis and could be written as —a vertical distance—as best understood.

Re claim 29, "the vertical distance" lacks clear antecedent basis and could be written as —a vertical distance—as best understood.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 17-18, and 24-29, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wood.

Wood teaches a dump vehicle including a dump bed, a trailer frame 1+, a hinge arm 8, and a pivot axle 9.

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Re claims 1 and 18, at least the left side of the hinge arm as viewed in figures 1-2 is not at a vertical angle as broadly claimed.

Re claim 4, the multiple axle portions/tilt bearing surfaces read on the multiple axles as broadly claimed.

Re claims 7-10, the system reads on the defined invention as broadly claimed.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7-10, as best understood, are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Wood.

Wood includes all of the claimed elements as discussed above regarding claim 1.

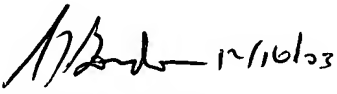
If Wood is not deemed to define the trailers as defined in claims 7-10, such trailer configurations are notoriously well known in the art. Specific recitations of these types of trailers then would not constitute a patentably distinct departure from the teachings of Wood and known prior art practices.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Sas teaches a dump body with a hinge arm.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Stephen Gordon
Primary Examiner
Art Unit 3612

stg